

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

D.C., INC., d/b/a DIRT CHEAP
CIGARETTES AND BEER,

Plaintiff,

vs.

DRP, INC., a Missouri Corporation,
JITENDRA PATEL, an Individual, and
RAJ PATEL, an Individual,

Defendants.

Case No.: 4:10-cv-01018-JCH

CONSENT PERMANENT INJUNCTION

This matter is before the Court on Plaintiff D.C., Inc. d/b/a Dirt Cheap Cigarettes and Beer's ("Dirt Cheap" or "Plaintiff") six-count Complaint against Defendants DRP, Inc., Jitendra S. Patel and Raj S. Patel (collectively "Defendants") alleging, *inter alia*, trademark infringement in violation of 15 U.S.C. § 1114(1)(a) and (b), false designation of origin in violation of 15 U.S.C. § 1125(a)(1)(A), state statutory claims for trademark infringement and dilution, and common law claim for unfair competition; and Plaintiff's Motion for Preliminary Injunction. Defendants have not filed their answer to Plaintiff's six-count Complaint or responded to Plaintiff's Motion for Preliminary Injunction.

To resolve this matter, the parties agree that within ten (10) days they shall execute a Settlement Agreement that includes, *inter alia*, mutual release of claims, dismissal with prejudice all of the claims and causes of action asserted against Defendants in Plaintiff's Complaint, and that each party shall pay their own attorney's fees. With respect to all counts of Plaintiff's Complaint, Plaintiff affirms and agrees that it shall not pursue, sue, file a claim, amend its

Complaint, file a cross-claim or third-party complaint, to assert a set-off or defense or affirmative defense, to file a charge, to make a claim or demand, in any action or proceeding of any kind in any court, or other relief from any proceeding, other than to seek enforcement of this Order or to enforce the terms of the aforementioned settlement agreement.

Accordingly, the parties stipulate to the following material facts and Defendants' agree to be permanently enjoined as follows:

Plaintiff has operated retail stores in the business of selling alcohol and tobacco products at discounted prices. Currently, Plaintiff operates a discount retail alcohol and tobacco store in Manchester, MO. Plaintiff developed its brand through a sixteen year advertising campaign. Plaintiff has used a distinctive crooked-letter font, and a red color scheme as depicted below:



DIRT CHEAP

Since 1994, Plaintiff has also used the phrases, "Cheap Cheap Fun Fun," "Fun Fun Cheap Cheap", "It's always a lot of fun at Dirt Cheap", "We are the last refuge for the persecuted smoker" and others. Through its advertising and marketing efforts and its status as a discount retailer of alcohol and tobacco products, Plaintiff has built a large and profitable business due to the strength of its brand, customer service philosophy, and the popularity of the pricing of its products, among other things.

Plaintiff obtained valid trademarks with U.S. Trademark Registrations. Plaintiff's trademark registrations pertinent to this action are as follows:

Dirt Cheap's U.S. Trademarks		
Reg. No.	Mark	Goods
3047335	"Dirt Cheap"	Discount retail alcohol and tobacco sales
2878533	"Fun Fun Cheap Cheap"	Discount retail alcohol and tobacco sales
2878535	"Size really does matter"	Discount retail alcohol and tobacco sales
2905628	"We are the last refuge of the persecuted smoker"	Discount retail alcohol and tobacco sales
2878534	"The more she drinks, the better you look"	Discount retail alcohol and tobacco sales

(hereinafter "Trademarks"). The rights to use the Trademarks of Registration Nos. 2878533, 2878535, 2905628, and 2878534 are incontestable under 15 U.S.C. § 1065.

Defendants advertise, distribute and sell directly competitive lines of products as those sold by Plaintiff. In connection with these items, Defendants have adopted and use the mark CHEAP CHEAP. Defendants also use a crooked-letter font and bright red color. Defendants have used the phrase "Cheap Cheap" as the name of their retail operation.

Defendants are using a similar font in the color red when using the phrase "Cheap Cheap". Defendants are not authorized by Plaintiff to operate retail alcohol and tobacco establishments, advertise, offer for sale, or sell and distribute alcohol and tobacco products while using, in any manner, Plaintiff's Trademarks.

Conditioned on the foregoing understandings and agreements and to avoid any instance of consumer confusion, Plaintiff and Defendants, through attorneys, have conferred and consented to this Order, whereupon:

IT IS HEREBY ORDERED that within thirty (30) calendar days Defendants Defendants DRP, Inc., Jitendra S. Patel and Raj S. Patel their parents, subsidiaries, affiliates, respective shareholders, officers, directors, employees, successors and assigns and all other

persons and other legal entities acting in concert or participation with them are hereby forever permanently enjoined and restrained from engaging in the actions set forth in paragraphs (a) through (e) below:

- (a) From using or displaying in any manner Plaintiff's Trademarks, in whole or in part, or any other designation that is confusingly similar to Plaintiff's Trademarks, including, but not limited to the use of similar crooked-letter red font and the terms and phrase "Cheap Cheap," "Fun Fun," "Cheap," "Fun" and "Dirt" ("Prohibited Terms") or any combination therewith, or any other terms or phrases in a manner likely to cause confusion, deception or mistake in connection with the operation, advertising, and marketing of retail liquor and tobacco establishments not Plaintiff's, or not authorized by Plaintiff, or may dilute Plaintiff's Trademarks; notwithstanding the aforementioned prohibitions shall not apply to unrelated third-party merchandise/products that display a Prohibited Terms or phrase on said product (e.g. Miller Brewer Co placing the term "fun" on packaging) that are for sale to the general public in Defendants retail establishments;
- (b) From committing any acts calculated to cause purchasers to believe that the Defendants' retail establishments and products sold therein are those sold under the control and supervision of Plaintiff, or sponsored or approved by, or connected with, or guaranteed by, or produced under the control and supervision of Plaintiff;
- (c) From further diluting and infringing Plaintiff's Trademarks, and damaging Plaintiff's goodwill;
- (d) From otherwise competing unfairly with Plaintiff in any manner; and
- (e) From conspiring with, aiding, assisting or abetting any other person or current or future business entity in engaging in or performing any of the activities referred to above.

IT IS FURTHER ORDERED that if Plaintiff incurs expenses to retain attorneys to enforce this Order and a Court finds this Order has in fact been violated in whole or in part, then the violating Defendant(s) shall pay all costs, court costs, fees and expenses, including actual attorneys' and expert fees, incurred by Plaintiff to enforce this Order.

Dated: August ____, 2010 at ____ o'clock __.m.

SO ORDERED:

Hon. Jean C. Hamilton
United States District Court
Eastern District of Missouri

BY CONSENT:

Jitendra S. Patel
JITENDRA S. PATEL

S. Patel
RAJ S. PATEL

Jitendra S. Patel
DRP, INC.

By: JITENDRA S. PATEL

Title: Secretary

Timm W. Schowalter
Timm W. Schowalter, Esq.
Attorney for Plaintiff

Date: 7/30/10